IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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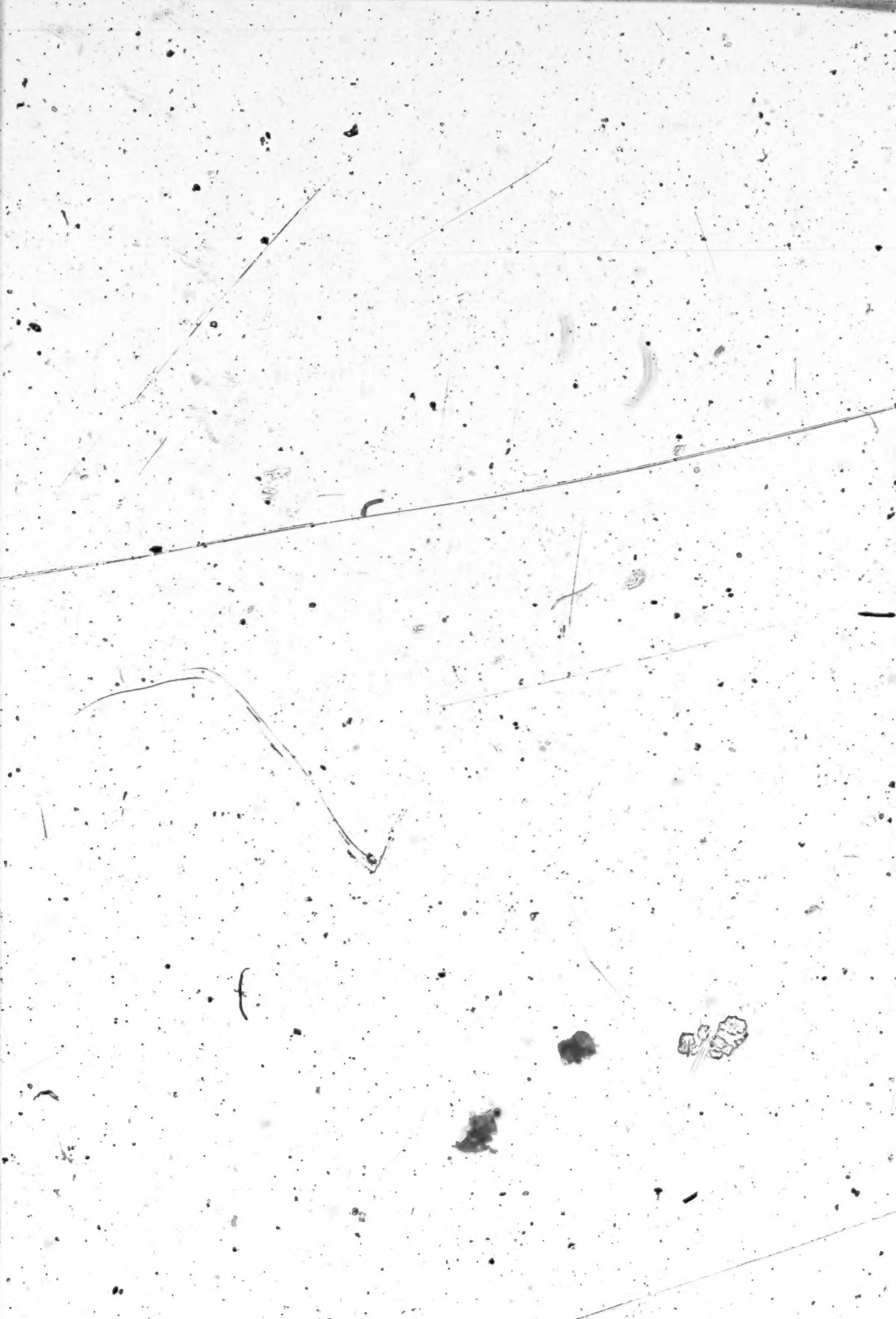

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Opinions Below

The opinion of the Connecticut Supreme Court sustaining the original conviction of the respondent, Robert Williams, is reported at 157 Conn. 114, 249 A.2d 245. The opinion of the United States District Court for the District of Connecticut is not reported but is included within the Appendix (A-49). The initial opinion of the Court of Appeals for the Second Circuit affirming the District Court is reported at 436 F.2d 30. The subsequent opinion of the Court of Appeals for the Second Circuit after rehearing *in banc* and reversing the District Court is reported at 441 F.2d 394.

Jurisdiction

The judgment of the Court of Appeals after rehearing was entered on April 14, 1971 (A-85). The petition for a writ of certiorari was filed on June 15, 1971, and was granted on January 10, 1972 (404 U.S. 1014). The jurisdiction of this Court rests upon 28 U.S.C. § 1254 (1).

Constitutional Provisions and State Statutes Involved

The Respondent has sought and attained relief by the Fourth Amendment prohibition against unreasonable searches and seizures, made applicable to the States by the Fourteenth Amendment.

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the person or things to be seized."

Section one of the Fourteenth Amendment to the Constitution of the United States provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 19-246 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Acts prohibited. No person shall manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drugs, except as authorized in this chapter."

Section 29-35 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Carrying of pistol or revolver without permit restricted. No person shall carry any pistol or revolver upon his person, except when such person is within his dwelling house or place of business, without a permit to carry the same issued as provided in section 29-28. The provisions of this section shall not apply to the carrying of any pistol or revolver by any marshal, sheriff or peace officer, or to any member of the armed forces of the United States, as defined by Section 27-103, or of this state, as defined by section 27-2, when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person carrying any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while carrying the same from the place of sale to the purchaser's residence or place of business, or to any person removing his household goods or effects from one place to another, or to any person while carrying any such pistol or revolver from his place of residence or business to a place or person where or by whom such pistol or revolver is to be repaired or while returning to his place of residence or business after the same has been repaired."

Section 29-38 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Weapons in vehicles. Any person who knowingly has, in any vehicle owned, operated or occupied by him, any weapon for which a proper permit has not been issued as provided in section 29-28 or section 53-206, or has not registered such weapon as required by section 53-202, as the case may be shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and the presence of any such weapon in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word 'weapon,' as used in this section, means any pistol or revolver, any dirk knife or switch knife or any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, and any other dangerous or deadly weapon or instrument, including any slug shot, black jack, sand bag, metal or brass knuckles or stiletto or any knife, the edged portion of the blade of which is four inches or over in length."

Section 6-49 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Arrest without warrant. Pursuit outside precincts. Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the speedy information of others, and members of the state police department or of an organized local police department or county detectives shall arrest, without previous com-

plaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Members of an organized local police department, when in immediate pursuit of one who may be arrested under the provisions of this section, are authorized to pursue such offender outside of their respective precincts into any part of the state in order to effect the arrest. Such person may then be returned in the custody of such officer to the precinct in which the offense was committed. Any person so arrested shall be presented with reasonable promptness before proper authority.''.

Question Presented

The respondent's writ of habeas corpus in the United States District Court contested the failure of the Connecticut state courts to exclude from state criminal proceedings against the respondent certain items of evidence seized from his person and automobile.

The factual situation presents the following question for determination:

> May a single police officer acting upon specific information received at 2:00 a.m. from a known person to the effect that a particular automobile contains a person with a gun in his waistband and with narcotics approach that automobile to investigate that information and finding such a person in the vehicle and concerned for his safety and protection may he thereupon remove the weapon from the occupant's waistband without first seeing it and without making any other search of the person?

Statement

During the early morning hours of October 30, 1966, a Bridgeport, Connecticut Police Sergeant named John Con-

nolly was on duty alone in a neighborhood within the City of Bridgeport with a particularly high incidence of crime of various kinds. At approximately 2:15 A.M. on that date Sergeant Connolly met and conversed with a person whom he knew by name and who he considered to be a reliable and trustworthy person. The same person had on one previous occasion supplied Sergeant Connolly with certain information relative to criminal activity which the Sergeant considered credible but which had not led to an arrest because the parties involved had apparently ceased their activity before the officer's arrival.

Sergeant Connolly spoke with the person in the area of a gasoline station situated at the corner of East Main Street and Hamilton Street, two local streets in Bridgeport. At that time the individual pointed out a specific automobile parked on Hamilton Street and advised Sergeant Connolly that there was an occupant in the vehicle who had both a pistol in his waistband and also narcotics. After receiving this information the Sergeant determined to investigate and walked out of the gas station and across Hamilton Street in the direction of the specific auto.

Upon arriving at the same automobile Sergeant Connolly observed a single occupant seated inside. The Sergeant asked the occupant to open the door and the occupant proceeded to roll down the passenger window instead. At that time Sergeant Connolly was still alone and was concerned about his personal safety and protection.

When the car window was lowered Sergeant Connolly immediately placed one hand in through the window, partially inside the occupant's coat which was open and directly onto the handle of a pistol which he immediately removed. The pistol was subsequently determined to be a fully loaded .32 Caliber revolver. Before seizing the pistol, the Sergeant had not advised the occupant that he was under arrest and had made no other search of any type and in fact had touched no other area of the occu-

pant's body or clothing. In seizing the pistol, Sergeant Connolly acted because he wanted to remove the weapon before the occupant of the vehicle had an opportunity to use it on himself (the officer).

The occupant of the automobile was the respondent, Robert Williams. Sergeant Connolly proceeded to place Williams under arrest for possession of the revolver and conducted a further search of his person which disclosed six cellophane packets of a white substance (heroin) in an Alka-Seltzer jar in Williams' coat pocket and an additional 21 cellophane packets of heroin in his wallet. A further search of the auto at the scene disclosed a machete hidden under the front seat.

The respondent was charged with the crimes of violation of the Uniform State Narcotic Drug Act, Section 19-246, Connecticut General Statutes, involving the control of heroin; Carrying a Pistol Without a Permit in violation of Section 29-35, Connecticut General Statutes; and having Weapons in a Motor Vehicle in violation of Section 29-38, Connecticut General Statutes.

The respondent filed timely Motions to Suppress alleging an unconstitutional search and seizure and following the denial of his motions the respondent was convicted of the three charges following a Court trial in the Superior Court on April 11, 1967. The respondent's convictions were affirmed by the Connecticut Supreme Court at 157 Conn. 114, 249 A. 2d 245 and certiorari was denied by the United States Supreme Court at 395 U.S. 927, 89 S. Ct. 1783, 23 L. Ed. 2d 244.

On August 14, 1969 the respondent filed the instant petition for a writ of habeas corpus and after a hearing held on November 14, 1969 the District Court denied the petition on January 6, 1970.

Thereafter the respondent's appeal to the Second Circuit Court of Appeals was heard on September 29, 1970

and the decision of the District Court was affirmed on December 16, 1970 by a divided Court. The respondent's request for a re-hearing was granted by the Court, which subsequently reversed the District Court by an *in banc* decision on April 14, 1971.

Summary of Argument

The petitioner maintains that the activities of Sergeant John Connolly on the date in question were reasonable and tempered and represented legitimate and necessary self-protective efforts while investigating possible criminal activity. It is respectfully submitted that the specific information presented to the officer by a known person was certainly adequate to initiate investigation on his part. When the Sergeant's investigation brought him into close contact with the respondent the officer acted to neutralize a weapon which could have been unexpectedly and fatally used against him. The intrusion caused by seizing the respondent's pistol was restricted to the absolute minimum necessary to substantiate the weapon's existence and to remove it.

The subsequent search of the petitioner and his auto at the same location were contemporaneous and incident to his arrest and the items located and seized were legally taken. *Draper* v. *United States*, 358 U.S. 307, 311, 314, 79 S. Ct. 329, 3 L. Ed. 2d 327, 330, 332; *Preston* v. *United States*, 376 U.S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

Argument

The questions of law presented within the instant appeal are limited, clear and unique. The petitioner submits that existing legal precedent and a common sense consideration of the factual situation both justify the actions of Sergeant John Connolly on the date in question.

The determination of the propriety of the officer's location and removal of the respondent's weapon involves a dual inquiry—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 20 L. Ed. 2d 889.

I. The Propriety of the Officer's Investigation

The Petitioner submits that the first of these two questions necessarily resolves to a consideration of the officer leaving the gas station for the purpose of investigating the information which he had received. It appears clear and undisputed that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest." *Terry* v. *Ohio*, ante at 22.

The determination of whether the conversation at the gas station was sufficient to constitute an "appropriate circumstance" necessarily requires a consideration of both the reporting witness and the information which he submitted to Officer Connolly.

The reporting witness was known to the officer by name, a consideration which distinguishes the instant situation from the area of an anonymous tip. Logically, a distinction should necessarily exist between information gained from an anonymous source and that received from an individual or informant whose identity is known to the police. Cf. *Draper* v. *United States*, 248 F. 2d 295, 298.

The deliberate contribution of false information by an individual would ordinarily lead to the probable wrath of the officer and additionally in Connecticut could also lead

to the party's own arrest.[1] Further, in the instant situation there is absolutely no indication of any reason or motive why the reporting witness would be untruthful.

It is additionally relevant that Officer Connolly was not only personally acquainted with the reporting witness but also considered the person to be credible and trustworthy. The same person had in fact previously contributed information to the officer concerning criminal activity which Connolly believed and investigated and which did not lead to an arrest in the opinion of the officer only because the parties involved had ceased their activities before his arrival.

The information received was itself specific. The witness did not merely report that the party was seated in an automobile on Hamilton Street but pointed out one specific vehicle. Further, the information was relatively specific as to what the person had in his possession, being narcotics and a pistol. As to the weapon the information was additionally specific in describing its exact location at the party's waistband.

The petitioner submits that a police officer may precipitate an investigation upon such specific information regardless of the reliability of the source as an established informant and without regard to whether there exists probable cause to arrest. *Terry* v. *Ohio, ante* at 22.

> "Government agents are commissioned to represent the interests of the public in the enforcement of the

[1] Section 53-168 of the Connecticut General Statutes provides as follows: "False complaint to police. Use of police radio information. Any person who knowingly makes to any police officer, deputy sheriff, sheriff or prosecuting attorney a false report or a false complaint alleging that a crime or crimes have been committed, or who makes use of any information that has been broadcast on local or state police radio frequencies for the purpose of furthering crime or aiding and abetting the flight of criminals or who knowingly interferes with the detention of criminals or the apprehension of criminals, shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

> law and this requires affirmative action not only when there is reasonable ground for an arrest or probable cause for a search but when there is reasonable ground for an investigation. This is increasingly true when the facts point directly to a crime in the course of commission in the presence of the agent. Prompt investigation may then not only discover but, what is still more important, may interrupt the crime and prevent some or all of its damaging consequences." *Brinegar* v. *United States*, 338 U.S. 160, 179, 69 S. Ct. 1302, 93 L. Ed. 1879, 1892 (concurring opinion of Justice Burton).

A police officer should be legally allowed to investigate information of existing criminal activity received from a citizen even though the reporting party does not want his identity revealed, when the information is specific and the officer believes it to be true, regardless of whether that party has previously contributed information which led to an arrest and conviction. To make such a prior arrest or conviction a necessary prerequisite to the investigation of information received by an officer would unduly burden and defeat legitimate police operations.

In the instant situation the subsequent location of a person in the particular designated automobile at 2:30 A.M. certainly contributed some degree of corroboration of the information received. The degree of corroboration concededly may be open to debate, but it appears unquestionable that the existence of a person in the designated auto at 2:30 A.M. must be considered substantially more corroborative than the same coincidence occurring at 2:30 in the afternoon.

It is respectfully submitted that it would have been poor police work to totally ignore the information received and that Sergeant Connolly was discharging a legitimate investigative function when he walked out of the gas station

and across the public street to the area of the respondent's automobile.

II. The Officer's Self-Protective Search

In the *Terry* decision the Chief Justice described "the crux" of the case to be "whether there was justification for McFadden's intrusion of Terry's personal security by searching him for weapons in the course of that investigation." *Terry* v. *Ohio, ante,* at 23.

The petitioner now requests this Court to apply the exact same criterion to Officer Connolly and to determine whether there was justification for Connolly's intrusion of Williams' personal security by extending his hand (only) into his open coat in the course of his investigation.

The language of the Chief Justice immediately following his designation of the crux of that case appears uniquely applicable to the instant situation:

> "We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.
>
> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. *When an officer is justified in believing that the*

individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.'' *Terry* v. *Ohio, ante,* at 24 (emphasis added).

Officer Connolly stood alone at 2:30 A.M. next to an auto containing a person who the officer believed had both narcotics and a pistol in his waistband. At that precise instant and location he was committed to make that split second decision which could involve consequences of supreme significance to himself.[2]

The Court of Appeals for the Second Circuit in its Per Curiam opinion apparently felt that the officer's removal of the pistol constituted an unjustified intrusion, holding that there was ''no other sufficient cause for reaching into Williams' waistband.'' *Williams* v. *Adams, Warden,* 441 F. 2d 394.

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[2] Sergeant Connolly testified on several occasions that he was particularly concerned for his safety at the time in question. At the Motion to Suppress the officer testified as follows:

"Q. Were you in concern for your own protection at that time? A. Yes, sir." (A-91)

During the respondent's trial Officer Connolly testified as follows:

"Q. And at the time, why did you reach in and remove this gun? A. Well, I wanted to remove the gun before he used it." (A-106)

Again at a later time during the trial the officer used the following language:

"Q. Why did you remove the pistol before you placed him under arrest? A. I didn't want him to use the pistol on me, sir." (A-114)

The respondent's Motion to Suppress was heard on April 4, 1967, and the trial itself was held on April 11, 1967, both having been heard substantially before the decision of this Court in the *Terry* case which was announced on June 10, 1968.

The petitioner submits and urges upon this Court that while a search cannot be justified by the items located it can never be disputed that Officer Connolly might well have been the late Sergeant John Connolly if he didn't act at the time and in the manner that he did.[3]

Parenthetically it should be noted that in both the *Terry* decision and the companion case of *Peters* v. *New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 reported on the same date, the individual police officer involved had absolutely no direct information concerning a weapon in the possession of either Terry or Peters, while in the instant situation Officer Connolly possessed specific information that Williams had a particular type of weapon and where it was located.

Similarly the factual situation in the present case can and should be clearly distinguished from the case of *Sibron* v. *New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917. In Sibron the Chief Justice emphasized that Patrolman Martin possessed no information concerning Sibron; was aware of no fact from which he could infer that Sibron was armed; did not search Sibron for the purpose of disarming him; and was in fact looking only for narcotics. *Sibron* v. *New York*, *ante* at 62, 64 and 65.

Conversely, it is again respectfully submitted that Officer Connolly was totally justified in his recognition that a

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[3] One Hundred and twenty-five local, county and state policemen were reported by the Federal Bureau of Investigation to have been murdered during the year 1971 with all but five of them having been killed by gunshot wounds. The Bureau reports that 24 policemen died answering robbery calls, 22 trying to arrest persons for crimes other than robbery or burglary, 20 shot from ambush and 20 during traffic law stops. Nine policemen were killed investigating suspicious persons or situations and seven each killed by prisoners, by mentally deranged persons and killed responding to burglary calls. The 1971 figures represents an increase of 25% over the total of 100 policemen who were murdered during 1970. Federal Bureau of Investigation Law Enforcement Bulletin, February, 1972, Page 33.

"reasonable apprehension of danger" to himself existed on Hamilton Street and in taking the absolute minimum defensive measure. Cf. *Terry* v. *Ohio, ante,* at 26.

III. The Scope of the Officer's Intrusion

If Sergeant Connolly was legally justified in acting to neutralize a legitimate threat of harm the question again remains whether his action was "reasonably related in scope to the circumstances which justified the interference in the first place." Cf. *Terry* v. *Ohio, ante,* at 20.

The intrusion in the instant situation differs in nature from the frisk applied by Officer McFadden to John Terry which consisted of the patting of a substantial portion of the outer clothing but which did not extend beneath the outer surface of the clothes until after the officer felt the weapon. Sergeant Connolly attempted no frisk or pat-down of any portion of Williams' body or clothing but did place one hand partially inside the man's open coat and onto the handle of the revolver which was located in the waistband of his trousers.

Clearly the weapons search must be strictly circumscribed by the exigencies which justify the initiation. *Terry* v. *Ohio, ante,* at 26. The intrusion caused by the seizure of the pistol from Williams was limited strictly to what was minimally necessary to determine whether the respondent had the weapon and to disarm him once it was discovered.

It is submitted that Officer Connolly acted appropriately in exactly the same fashion that any trained police officer or any man of reasonable caution would have in those circumstances, namely to focus attention exclusively on the location where he believed the weapon to be. Quite clearly Sergeant Connolly was not conducting an exploratory search for whatever evidence of criminal activity he might find. Cf. *Terry* v. *Ohio, ante,* at 30.

It is certainly recognized that for all practical purposes indignities or intrusions upon a person are not capable of being compared, measured or accurately defined. It is however, further submitted that the intrusion in the instant situation was probably the absolute minimum conceivable. It would appear that the officer never touched any part of the respondent's body and only an absolute minute portion of his clothing. There were no other persons in attendance. It is submitted that the scope of the indignity was minimal.

The action of Officer Connolly was clearly not "the product of a volatile or inventive imagination, or undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so." Cf. *Terry* v. *Ohio, ante,* at 28.

IV. Misapplication of the Informant Requirements

The right of a police officer to protect himself on the street should not be related to or dependent upon the law concerning informants. It appears patently illogical to hinge an officer's ability to legally protect himself on a judicial inquiry of whether the individual or informant advising him of the existence of an armed person has previously supplied sufficient information to qualify as a reliable informant. It appears just as illogical to insist that the street patrolman take the time to test the reporting party's sources and reliability before acting. Accordingly the petitioner submits that the rationale of the decision of *Spinelli* v. *United States,* 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637, should not be extended to the area of the protective search.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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